

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B', KOLKATA**  
[Before Dr. Manish Borad, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 595/Kol/2022**  
**Assessment Year : 2017-18**

Anil Kumar Ghosh	Vs.	PCIT, Kolkata-9
PAN: ADTPG 4198 H		
Appellant		Respondent

Date of Hearing	08.12.2022
Date of Pronouncement	02.03.2023
For the Assessee	Shri A. Bandhu Maitra, Advocate
For the Revenue	Shri Biswanath Das. CIT, DR

**ORDER**

**Per Shri Sonjoy Sarma, JM:**

This appeal of the assessee for the assessment year 2017-18 is directed against the order dated 10.03.2022 passed by the Id. Principal Commissioner of Income-tax, Kolkata-9 [hereinafter referred to as 'the Id. PCIT'] passed u/s 263 of the I.T. Act.

2. Though the Registry has pointed out that the appeal is time barred, however, in view of the decision of the Hon'ble Supreme Court in the case of **Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020**, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. In view of this, the appeal is treated as filed within the limitation period.

3. The assessee is an individual and return of income for the assessment year under consideration was filed by him on 27.11.2017 by declaring a total income of Rs. 95,29,520/-. In the

assessment completed u/s 143(3) of the Act vide an order dated 16.12.2019, the total income of the assessee was determined by the assessing officer at Rs. 95,29,520/-. The records of the said assessment came to be examined by the ld. PCIT and on such examination he was of the view that the assessment order passed by the assessing officer u/s 143(3) of the Act suffered from the following error which was prejudicial to the interest of revenue. The relevant portion of the extract from the order passed by the ld. PCIT is as under:

*2. On examination of assessment records for A.Y. 2017-18, it was observed that assessee have some rental income from commercial complex and tower amounting to Rs. 58,47,025/-. The same was treated as business income and various expenses was deducted from the above said rental income which resulted in income from commercial complex and tower account of Rs. 35,92,826/-. However, the income generated by collection of rent should have been treated as House property income. As per section 24 of the IT Act, only 30% standard deduction is allowable from the said rental income. It was also seen from records that during the earlier A.Y 2016-17 the assessee has shown house property income of Rs.31,50,284/- being the amount of rent from commercial complex and tower account.*

*3. The AO completed the assessment by allowing the said rental income from commercial complex and tower amounting to Rs. 58,47,025/- as business income instead of house property income. In the instant case there was absolutely no explanation about the treatment of rental income as business income in assessment stage; the action of A.O. allowing the incorrect reporting head of rental income marked the order erroneous in so far as it is prejudicial to the interests of the revenue. The AO should have placed the entire rental income under the head income from house property' and should have allowed only standard deduction u/s 24(a) of the Act amounting to 30% of Gross Annual Value. Failure to do so has rendered the assessment erroneous and failure to bring the apparent undisclosed income to the ambit of taxation has rendered the assessment prejudicial to the interest of revenue.*

4. The ld. PCIT accordingly issued a notice u/s 263 of the Act to the assessee on 15.12.2021 and 02.03.2022 respectively pointing out the above error and seeking explanation from the assessee as to why the assessment order passed by the assessing officer u/s 143(3) of the Act should not be revised by treating the same as erroneous and prejudicial to the interest of revenue. In reply, it was submitted by the assessee along with his authorized representative that the rental income offered as business income was absolutely right and should not be treated it under the head of house property. However, in this regard, the assessee nor his AR filed any written submission in support of their contention before the ld. PCIT. After hearing the assessee, the ld. PCIT accordingly held that the order passed by the assessing officer u/s 143(3) dated 16.12.2019 suffered from the error by stating that during the assessment year 2016-17 assessee has shown this income under the head of income from the house property and for the assessment year under consideration, the assessee has shown it to be the business income. However, in this regard, assessee could not controvert the fact before the ld. PCIT by filing proper reply and even the issue was never verified by the ld. AO during the scrutiny proceeding. Therefore, the ld. PCIT viewed that since the order was prejudicial to the interest of revenue, he set aside the order passed by the assessing officer u/s 143(3) of the Act with the following direction. The relevant extract of the order passed by the ld. PCIT is as under:

*“15. Under these circumstances, I am of the considered opinion that it is a fit case for invoking provisions u/s 263 of the I.T. Act. Thus, the assessment order u/s 143(3) of the Act passed on 16.12.2019 is being set aside and restored back to the file of assessing officer u/s 263 so as to frame a fresh assessment by inter alia looking into the issues analyzed at paragraphs discussed above. Needless to add that the AO shall provide a reasonable opportunity of being heard to the assessee before finalizing the assessment.”*

5. Aggrieved by the order of the ld. PCIT passed u/s 263 of the Act, assessee preferred an appeal before the Tribunal.

6. The assessee has raised multiple grounds of appeal before this Tribunal. However, the effective ground is here to decide regarding initiating proceedings u/s 263 of the Act by which ld. PCIT setting aside the regular assessment made u/s 143(3) of the Act.

7. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As regards, the assessee allegedly pointed out by the ld. PCIT in the order passed by the ld. assessing officer u/s 143(3) of the Act by which he alleging that the claim of the assessee's rental income from commercial complex and tower amounting to Rs. 58,47,025/- shown as business income instead of house property income. However, during the assessment year 2016-17, the assessee has shown said rental income under the head of income from house property. Even in the assessment order, there is nothing on record to show that any enquiry whatsoever was made by the assessing officer so as to ascertained whether rental

income from commercial complex and tower amounting to Rs. 58,47,025/- as business income or house property income as found by the ld. PCIT on examination of the relevant assessment records. The relevant details to ascertain the exact nature of transaction effected by the assessee in rental income from commercial complex and tower amounting to Rs. 58,47,025/- shown as business income instead of house property income. There is nothing brought on record on behalf of the assessee to rebut or controvert this finding especially recorded by the ld. PCIT during the course of proceeding u/s 263 of the Act. In reference to above, the assessee had replied that the rental income offered by the assessee as business income was absolutely right and it should not be treated under the head of house property and in this context assessee did not even furnish any written submission in support of his contention before the ld. PCIT. It is thus clear that the claim of the assessee for rental income from commercial complex and tower amounting to Rs. 58,47,025/- shown as business income instead of house property was allowed by the ld. AO without making necessary enquiry which was called for in the facts and circumstances of the case and there was an error in the order passed by the assessing officer u/s 143(3) of the Act. Therefore, the view taken by the ld. PCIT on this aspect has rightly pointed out by which he set aside the order passed by the AO stating that it was prejudicial to the interest of revenue.

8. For the reasons above, we do not find any infirmity in the order passed by the ld. PCIT. Accordingly, we upheld the impugned order of the ld. PCIT passed u/s 263 of the Act.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 02.03.2023.

Sd/-

Sd/-

(Manish Borad)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 02.03.2023

*Biswajit, Sr. PS*

Copy of the order forwarded to:

1. Appellant- Anil Kumar Ghosh, 11/5, Halder Para Road, Kolkata-700137.
2. Respondent – PCIT, Kolkata-9.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata